

Adopt Chapter Bar 600 to read as follows:

CHAPTER Bar 600 TANNING FACILITIES

PART Bar 601 DEFINITIONS

Bar 601.01 “Fitzpatrick scale” means “Fitzpatrick scale” as defined in RSA 313-A:1, VIII-a.

Bar 601.02 “Operator” means “operator” as defined in RSA 313-A:1, XI-a

Bar 601.03 “Personal use” means tanning devices which are limited exclusively to an individual and this individual’s immediate family.

Bar 601.04 “Phototherapy device” means “Phototherapy device” as defined in RSA 313-A:1, XI-b.

Bar 601.05 “Tanning device” means “tanning device” as defined in RSA 313-A:1, XIV.

Bar 601.06 “Tanning facility” means “tanning facility” as defined in RSA 313-A:1, XV.

Bar 601.07 “Ultraviolet (UV) radiation” means “Ultraviolet (UV) radiation” as defined in RSA 313-A:1, XVI.

PART Bar 602 APPLICATION PROCEDURES

Bar 602.01 Application for a Tanning Facility Registration.

(a) Each applicant applying for a tanning facility registration in accordance with RSA 313-A:28 shall make application on a form provided by the board and attach the fee in the amount of \$45.00.

(b) The applicant shall supply the following on the application for a tanning facility registration:

(1) The name and address of the facility, in accordance with RSA 313-A:28, II;

(2) The name and address of the owner(s), in accordance with RSA 313-A:28, II;

(3) A list of equipment including the number for each type of tanning device; and

(4) Signature of owner(s) and current date.

(c) Upon receipt of a completed application in accordance with (b) above, a tanning facility registration shall be issued.

(d) If the application is not completed in accordance with (b) above, the board shall return it with all attachments and a letter. The letter shall be in accordance with Bar 301.02(d)(1) through (3).

PART Bar 603 OPERATIONAL REQUIREMENTS

Bar 603.01 Tanning Owner Requirements.

(a) Only tanning devices manufactured and certified under the provisions of 21 CFR 1040.20, shall be used in tanning facilities. Compliance shall be based on the standard in effect at the time of manufacture as shown on the device identification label required by 21 CFR Parts 1010.2 and 1010.3.

(b) Each tanning device shall have the following:

- (1) A method of remote timing located so that consumers may not set their own exposure time; and
- (2) A control that allows the consumer to turn on and off the device at any time.

(c) There shall be physical barriers to protect consumers from injury caused by falling against or breaking the lamps.

(d) The tanning devices shall be maintained in good repair and comply with all state and local electrical code requirements.

(e) If a tanning device has a broken physical barrier the unit shall not be used until the broken physical barrier is replaced.

(f) Access to the booth shall be of rigid construction, doors shall open outwardly, and nonslip floors shall be provided.

(g) Eyewear shall not be reused by another consumer.

(h) The operator shall have the consumer use protective eyewear that meets the requirements of 21 CFR 1040.20 (c) (4) as published in the Federal Register as of April 1, 2004.

(i) Protective eyewear shall not be altered in any manner that would change its use as intended by the manufacturer, such as removal of straps.

(j) An entrance, either from the outside, or from a common hallway shall be provided. Access shall not be through any living quarters.

(k) Lavatory facilities shall be publicly accessible to all consumers and employees. Consumers and employees shall not use family restrooms.

(l) All tanning facilities shall keep their floors, walls, woodwork, ceiling, furniture, furnishing, and fixtures clean.

(m) When a tanning facility closes, the owner of the facility shall notify the board immediately.

(n) Defective or burned-out lamps or filters shall be replaced with a type intended for use in that device as specified on the product label on the tanning device or with lamps or filters that are equivalent under 21 CFR 1040, Section 1040.20 as published in the Federal Register as of April 1, 2004.

(o) Records required by RSA 313-A:30, VI maintained on computer systems shall be regularly copied, at least monthly, and updated on storage media other than the hard drive of the computer. An electronic record shall be retrievable as a printed copy.

(p) A tanning facility shall not claim, or distribute promotional materials that claim, that using a tanning device is safe or free from risk or that the use of the device will result in medical or health benefits. The only claim that may be made is that the device is for cosmetic use only.

(q) Open waste containers shall be prohibited.

(r) Soiled towels shall be deposited in a closed receptacle and not used again until properly laundered and sanitized.

(s) Each tanning facility shall be kept well lighted and ventilated.

(t) Each tanning facility shall have the owners manual for each tanning unit.

(u) Contact surfaces of tanning devices shall be sanitized between each use or the contact surfaces shall be covered by a non-reusable protective material during each use.

Bar 603.02 Operator Requirements.

(a) All operators shall comply with RSA 313-A:30.

- (b) Operators shall have the consumer present their protective eyewear prior to each use.
- (c) Operators shall not allow a consumer to use a tanning device if that consumer does not have the protective eyewear required by Bar 603.01 (h).
- (d) A trained operator shall be present when a tanning device is operated.
- (e) The operator shall limit the exposure of the consumer to the maximum exposure frequency and session duration recommended by the manufacturer at their facility.
- (f) When a tanning device is being used, no other person shall be allowed to remain in the tanning device area.
- (g) Operators shall be at least 18 years of age.

Bar 603.03 Training for Device Operators.

- (a) All operators shall be trained as required by RSA 313-A:30, II.
- (b) Any individual or organization wanting to provide training in accordance with RSA 313-A:30, II shall submit a curriculum for the board's approval.
- (c) Tanning facilities shall maintain verification of training for each tanning device operator as required by RSA 313-A:30, II
- (d) Tanning facilities shall maintain a list of tanning device operators, as required by RSA 313-A:30, II, that were trained in accordance with Bar 603.03 (a), which shall be available at the tanning facility for inspection by the board.

Bar 603.04 Complaints of Misconduct.

- (a) Complaints alleging misconduct by tanning facilities shall:
 - (1) Note violations of RSA 313-A and or the board administrative rules;
 - (2) Be in writing; and
 - (3) Be filed at the board's offices in Concord, New Hampshire.
- (b) A complaint shall contain the following information:
 - (1) The name and address of the complainant;

- (2) The name and address of the tanning facility against whom the complaint is directed;
- (3) Date, time, place and summary of alleged violation(s);
- (4) Name, address of those having knowledge of the alleged violations;
- (5) Specific provision of RSA 313-A and/or the board administrative rules on which the complaint is based; and
- (6) Other data the complainant believes pertinent to the complaint.

(c) A complaint shall not be accepted that alleges acts of misconduct that occurred prior to the laws passing requiring regulation of tanning facilities.

(d) A complaint shall be treated as a petition to the board within the meaning of RSA 541-A:29.

(e) The licensee shall respond in writing to stated misconduct allegations by responding to each allegation within 30 days.

PART Bar 604 INSPECTIONS AND FORMS

Bar 604.01 Inspections.

(a) Inspections shall be made whenever necessary to ensure compliance with RSA 313-A or the board's administrative rules, investigate a complaint against a tanning facility, and to follow up on violations previously documented.

(b) All tanning facilities shall be inspected for compliance with these rules and RSA 313-A, and by an inspector on an inspection report as follows:

- (1) Whether the tanning facility has complied with RSA 313-A:30 and 31;
- (2) Whether the tanning facility has complied with the requirements for tanning devices pursuant to Bar 603.01 (a) – (f), (n), (o) (t); and (u);
- (3) Whether the tanning facility has complied with the requirements of eyewear pursuant to Bar 603.01 (g)-(i);
- (4) Whether the tanning facility has complied with the requirements of the entrance pursuant to Bar 603.01 (j);
- (5) Whether the tanning facility has complied with the requirements for lavatory facilities pursuant to Bar 603.01 (k);

(6) Whether the tanning facility has complied with the requirements for floors, walls, woodwork, ceilings, furniture, furnishing, and fixtures pursuant to Bar 603.01 (l);

(7) Whether the tanning facility has complied with the requirements for promotional materials pursuant to Bar 603.01 (p);

(8) Whether the tanning facility has complied with the requirements for containers and sanitizer pursuant to Bar 603.01 (q) and (r);

(9) Whether the tanning facility has complied with the requirements for lighting and ventilation pursuant to Bar 603.01 (s);

(10) Whether the tanning facility has complied with the requirements for operators pursuant to Bar 603.02 and 603.03; and

(11) Whether the tanning facility has a current registration.

(d) The inspection report shall be completed, dated, and signed by the inspector before leaving the premises. The tanning facility operator shall sign the inspection report, to indicate receipt, and shall be given a copy of the report before the inspector leaves the premises.

(e) The tanning facility shall post the most recent inspection report in a conspicuous and unobstructed place in the facility following the inspection.

(f) Violation(s) shall be rectified within 7 working days unless a suspension of operation is issued pursuant to RSA 313-A:32.

PART Bar 605 EXPIRATION OF REGISTRATION AND RENEWALS.

Bar 605.01 Tanning Facility Registration Expires. All tanning facilities registrations shall expire April 30th of each year.

Bar 605.02 Renewal Forms.

(a) The board shall send a renewal form at least 60 days prior to the expiration date of registration.

(b) Each applicant wishing to renew his/her registration shall complete and file with the board a renewal form at least 30 days prior to the expiration date of a registration and attach the fee in the amount of \$45.00.

(c) Each applicant shall include the following on the form:

- (1) The name and address of the facility, in accordance with RSA 313-A:28, II;
- (2) The name and address of the owner(s), in accordance with RSA 313-A:28, II;
- (3) A list of equipment including the amount; and
- (4) Signature of owner(s) and current date.

Bar 605.03 Procedure for Approving or Denying a Renewal Form.

(a) The board, in accordance with Bar 605.02, shall approve or deny the renewal form.

(b) If the renewal form is completed, in accordance with Bar 605.02, the renewal form shall be approved and a registration issued.

(c) If the renewal form is not completed, in accordance with Bar 605.02, the board shall return it with all attachments and a letter. The letter shall be in accordance with Bar 301.02(d)(1) through (3).

(d) If a registration expires the tanning facility shall not operate until the tanning facility reapplies in accordance with Bar 602.01, pays the fee, and obtains a registration from the board.

PART Bar 606 VIOLATION POINTS AND ADMINISTRATIVE FINES

Bar 606.01 Notice.

(a) The board shall notify, by certified mail return receipt requested, any tanning facility the board is imposing a fine upon of:

- (1) The proposed amount of the fine according to Bar 606.02 and Bar 606.03; and
- (2) The person's right to a hearing before the board prior to final determination of a fine.

(b) The notice shall state the person has the following options upon receipt of the notice:

- (1) To waive the right to a hearing and pay the proposed fine immediately;
- (2) To request a pre-hearing conference in accordance with Bar [606.02]

404.06; or

(3) To appear for the hearing in accordance with Bar [606.03] **404.07**.

Bar 606.02 Violation Points for a Tanning Facility.

(a) For each violation 3 points shall be issued if a tanning facility did not comply with Bar 603.01 (j) –(m) or (q)-(t).

(b) For each violation 5 points shall be issued if a tanning facility did not comply with Bar 603.01 (a) – (d) and (f) – (i).

(c) For each violation of the following, 25 points shall be issued:

(1) If tanning facility did not comply with Bar 603.01 (n), (o), (p), or (u); and

(2) If tanning facility did not comply with Bar 603.02 (c) or (f).

(d) For each violation 100 points shall be issued if the tanning facility did not comply with RSA 313-A:30.

(e) For each violation 250 points shall be issued if the tanning facility did not comply RSA 313-A:31.

Bar 606.03 Administrative Fine Assessment for a Tanning Facility. Except as provided by Bar 606.07, administrative fines shall be assessed as follows:

(a) For 25 or more, but less than 50 points, the fine imposed shall be \$25;

(b) For 50 or more, but less than 75 points, the fine imposed shall be \$50;

(c) For 75 or more, but less than 100 points the fine imposed shall be \$100;

(d) For 100 or more points the fine imposed shall be one dollar for each point; and

(e) For failure to comply with an order of the board, the fine shall be in accordance with RSA 313-A:32.

(f) For failure to register a tanning facility, the fine shall be in accordance with RSA 313-A:34.

Bar 606.04 Administrative Fine Adjustments.

(a) Following a hearing, the board shall increase the amount of a fine provided for in Bar 606.03 when one or more of the following aggravating factors are reflected by specific findings of fact, expressed in the record:

- (1) Continuing noncompliance with the board statutes, rules, and directives;
- (2) The degree of respondent's willfulness and/or negligence involved in the violation;
- (3) Any history of noncompliance with RSA 313-A, rules or directives;
- (4) Bad faith or misrepresentation of any material fact; and
- (5) Additional information presented during the hearing which reflects an aggravating factor based on a totality of circumstances.

(b) Following a hearing or a pre-hearing conference the board shall decrease the amount of a fine provided for in Bar 606.03 when mitigating factors reflected by specific findings of fact, expressed in the record or good faith efforts to comply with RSA 313-A and the board's rules, and directives.

Bar 606.05 Multiple Violations.

(a) The board shall assess separate fines against a party for multiple violations of the statute and/or rules provided the board makes a separate finding of fact from the record for each violation.

(b) Nonpayment of a fine by a registrant in contravention of an order, agreement or promise to pay, shall result in separate discipline by the board and shall result in denying any future registration until paid.